

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANIEL ELLIS ANGER,

Plaintiff,
v.

Civil No. 2:20-cv-11715
Honorable Linda V. Parker

GRETCHEN WHITMER, ET AL,

Defendants.

**OPINION AND ORDER SUMMARILY DISMISSING CASE AND
DENYING AS MOOT PLAINTIFF'S MOTION TO ADJUDICATE CASE
AS A COMPANION MATTER AND FOR TEMPORARY RESTRAINING
ORDER**

On April 24, 2020, Plaintiff Daniel Ellis Anger, a Michigan inmate, filed this civil rights action pursuant to 28 U.S.C. § 1983. Plaintiff is suing the Governor of Michigan, the Oakland and Clare County Prosecutors, and the Warden at the Cooper Street Correctional Facility where Plaintiff is incarcerated. The action arises from Plaintiff's conviction in the Oakland Circuit Court for failing to notify the State of unregistered vehicles located on his property in violation of Michigan's Sex Offender Registration Act ("SORA"). In his Complaint, Plaintiff requests that this case be adjudicated as a companion case to *Doe v. Snyder*, No. 2:16-cv-13137 (E.D. Mich. filed Aug. 30, 2016), because the court in that case found unconstitutionally vague the SORA provision underlying Plaintiff's

conviction. Plaintiff also requests that he be granted release from prison. On August 27, 2020, Plaintiff filed a motion again asking the Court to consider this case as a companion matter to *Doe v. Snyder* and to issue a temporary restraining order preventing his continued detention. (ECF No. 4.) For the reasons explained below, the Court is summarily dismissing Plaintiff's Complaint and denying as moot his pending motion.

I. Background

Plaintiff was convicted of criminal sexual conduct involving a minor in Wayne County Circuit Court in 2006, and he was later convicted of accosting a child in Clare County Circuit Court in 2014. These convictions obligated Plaintiff to comply with SORA. Plaintiff was on probation for his Clare County conviction in 2018. (ECF No. 1 at Pg ID 15.)

Plaintiff asserts that in June of 2018, he was charged with a probation violation in Clare County for failing to report an unregistered van located on his driveway – an act which also constituted a criminal violation of SORA. (*Id.*) Oakland County filed separate criminal charges for the violation. (*Id.*) Plaintiff states that on March 11, 2019, he pleaded guilty to the probation violation in Clare County, and was sentenced to 13-to-72 months' imprisonment. (*Id.* at Pg ID 5-6,

16.) Plaintiff also pleaded guilty to the SORA violation in Oakland County, and was sentenced to a concurrent term of 8-months' imprisonment. (*Id.* at Pg ID 5.)

Plaintiff asserts that on February 14, 2020, while he was incarcerated, he learned that the SORA provision underlying the above convictions was ruled to be unconstitutionally vague. *See* Op. & Order, *Doe v. Snyder*, No. 16-13137 (E.D. Mich. Feb. 14, 2020), ECF No. 84. Plaintiff indicates that he therefore filed a "Motion to Set Aside Judgment" in the Oakland Circuit Court under Michigan Court Rule 2.612(C)(1), raising this constitutional challenge to his conviction. (ECF No. 1 at Pg ID 6, 20-23.) The prosecutor responded that Plaintiff was proceeding under the wrong court rule, and that if he wished to challenge the validity of his conviction, he was required to do so by filing a motion for relief from judgment under Michigan Court Rule 6.501 et seq. (*Id.* at Pg ID 25-3.) When Plaintiff filed his Complaint in the current matter, his motion was still pending in the Oakland County Circuit Court. (*Id.* at Pg ID 7.)

II. Standard

Plaintiff paid the full filing fee for this action. Nevertheless, the Prison Litigation Reform Act of 1996 requires a federal district court to screen a prisoner's complaint and to dismiss the complaint if the allegations are frivolous, malicious, fail to state a claim for which relief can be granted, or seek monetary

relief from a defendant who is immune from such relief. *Flanory v. Bonn*, 604 F.3d 249, 252 (6th Cir. 2010) (citing 28 U.S.C. §§ 1915(e), 1915A and 42 U.S.C. § 1997e); *Smith v. Campbell*, 250 F.3d 1032, 1036 (6th Cir. 2001) (citing 28 U.S.C. §§ 1915(e)(2), 1915A). A complaint is frivolous if it lacks an arguable basis in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). “District courts are required to screen all civil cases brought by prisoners, regardless of whether the inmate paid the full filing fee, is a pauper, is pro se, or is represented by counsel, as the statute does not differentiate between civil actions brought by prisoners.” *In re Prison Litig. Reform Act*, 105 F.3d 1131, 1134 (6th Cir. 1997) (emphasis added).

III. Discussion

Plaintiff’s Complaint is barred by the favorable-termination requirement set forth in *Heck v. Humphrey*, 512 U.S. 477 (1994).

“Federal law opens two main avenues to relief on complaints related to imprisonment: a petition for writ of habeas corpus, 28 U.S.C. § 2254, and a complaint under . . . 42 U.S.C. § 1983.” *Muhammad v. Close*, 540 U.S. 749, 750 (2004) (per curiam). “Challenges to the validity of any confinement or to particulars affecting its duration are the province of habeas corpus; requests for relief turning on circumstances of confinement may be presented in a § 1983

action.” *Id.* (internal citation omitted). A prisoner’s claims are within the core of habeas corpus if they challenge the fact or duration of a conviction or sentence. *Preiser v. Rodriguez*, 411 U.S. 475, 489-90 (1973); *Nettles v. Grounds*, 830 F.3d 922, 934 (9th Cir. 2016) (en banc).

In *Heck*, the Supreme Court held that a § 1983 claim cannot proceed when “a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence.” 512 U.S. at 486-87. Accordingly, “a state prisoner’s § 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages or equitable relief), no matter the target of the prisoner’s suit (state conduct leading to conviction or internal prison proceedings)—if success in that action would necessarily demonstrate the invalidity of confinement or its duration.” *Wilkinson v. Dotson*, 544 U.S. 74, 81-82 (2005).

Heck requires a plaintiff in a § 1983 action “first . . . to prove that his conviction had been invalidated in some way.” *McDonough v. Smith*, 139 S. Ct. 2149, 2157 (2019) (citing *Heck*, 512 U.S. at 486). “This favorable-termination requirement, the Court explained, applies whenever ‘a judgment in favor of the plaintiff would necessarily imply’ that his prior conviction or sentence was invalid.” *Id.* (quoting *Heck*, 512 U.S. at 487).

Plaintiff has not alleged that his conviction or sentence have been invalidated. *Id.*; *Goldman v. Consumers Credit Union*, No. 17-1700, 2018 WL 3089811, at *3 (6th Cir. Feb. 14, 2018) (affirming sua sponte dismissal under 28 U.S.C. § 1915(e)(2) where the plaintiff failed to allege that he successfully challenged his convictions). When Plaintiff filed the current action, the Oakland County Circuit Court had not ruled on his motion to invalidate his conviction; nor had his convictions been invalidated by any other court.

This Court is not required to recharacterize Plaintiff's civil rights complaint as a petition for the writ of habeas corpus. *See Young Bok Song v. Gipson*, 423 F. App'x 506, 509 (6th Cir. 2011). The Court declines to do so particularly because Plaintiff has not yet exhausted his state court remedies as required under 28 U.S.C. § 2254(b) and (c). *See Parker v. Phillips*, 27 F. App'x 491, 494 (6th Cir. 2001).

Finally, because the Court dismisses the action pursuant to *Heck*, the dismissal is without prejudice. *See Wheeler v. Dayton Police Dep't*, 807 F.3d 764, 767 (6th Cir. 2015).

IV. Conclusion

For the reasons discussed above, the Court is **SUMMARILY DISMISSING WITHOUT PREJUDICE** Plaintiff's Complaint pursuant to 28 U.S.C. § 1915A. Plaintiff's pending motion (ECF No. 4) is therefore **DENIED**

AS MOOT. To the extent Plaintiff wishes to appeal this decision in forma pauperis, the Court finds that the appeal would not be in good faith within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997).

IT IS SO ORDERED.

s/ Linda V. Parker
LINDA V. PARKER
U.S. DISTRICT JUDGE

Dated: September 15, 2020

I hereby certify that a copy of the foregoing document was mailed to counsel of record and/or pro se parties on this date, September 15, 2020, by electronic and/or U.S. First Class mail.

s/ R. Loury
Case Manager